

## Your Feedback is Helping IPAD Serve You Even Better

**By Laurie Beyer-Kropuenske**  
**IPAD Director**

With the arrival of a new year, there are always thoughts of resolutions, fresh starts and what can be done differently – maybe even better.

Like so many of my colleagues in public service, I have struggled with how to set meaningful performance measures in challenging budget times. This past summer, I asked Admin's Management Analysis & Development (MAD) to interview a sampling of Information Policy Analysis Division's diverse customer base to get additional perspectives on IPAD.

I hoped to gain from customers ideas about how IPAD can best fulfill the Commissioner's statutory duties, meet customer needs and set priorities with IPAD's resources.

The feedback MAD collected was overwhelmingly positive and I'm so grateful for their help. Thanks also to all of you who took the time to be interviewed and for your honesty. Your feedback confirmed so much of what I knew or thought I knew. Here are some highlights:

All of you view IPAD as "essential and indispensable to both government and the public." You described the importance of transparency laws in assuring an accountable and well-functioning society.

For data requestors, IPAD is an "expert resource" that helps them understand and exercise their rights.

Government agencies appreciate help understanding "an increasingly complex body of law." Both sides see our knowledgeable and neutral advice on the law's application as helping parties resolve disputes without costly legal actions.

One of IPAD's greatest strengths is its knowledgeable, experienced and accessible staff. IPAD's searchable database of advisory opinions is a strong asset that is frequently used by government and the public. IPAD is viewed as fair and impartial by many of the interviewees, although some government employees noted that they had historically viewed IPAD as more sympathetic to data requestors. Lastly, all of our customers appreciate IPAD's outreach and training efforts.

Interviewees had a hard time identifying IPAD's weaknesses. There is unanimous support for increased staff and resources so that IPAD can do more good work. Both government and citizens want IPAD to publicize and promote our services more widely. On the law, many of you had a great deal to say.

You find the law difficult to navigate, confusing, piecemeal and vague. Government interviewees highlighted that the law lacks allowances for practical difficulties in complying with its requirements, especially on issues related to information technology.

***Director's message***

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Information Policy  
Analysis Division

Minnesota  
Department of  
Administration

# 2005 Special Session Laws of Interest

*The Omnibus Data Practices bill was summarized in the Summer 2005 edition of FYI. Other regular session laws that contain language related to data practices were summarized in the Fall 2005 edition. The following are provisions from Special Session laws that relate to data practices. The effective dates are noted.*

**Chapter 1** is the agriculture and environment omnibus bill. Article 2, section 11, subdivision 13, includes a reference to data that are collected for planning and management of natural resources; emergency preparedness and infrastructure investments must conform to data architecture standards promulgated by the Office of Enterprise Technology. In addition, the data have to be made available to the Land Management Information Center, which will make them accessible online for free "...unless [the data are] made private under the Data Practices Act..." The effective date for this provision is unclear.

**Chapter 4**, Article 1, section 1 is an amendment to section 13.46, subdivision 4 (licensing data) to authorize the sharing of not public data with the Department of Corrections "...for purposes of regulating services for which the Department of Human Services and the Department of Corrections have regulatory authority." This amendment was effective July 15, 2005.

Section 46 amends Chapter 136, Article 5, section 2 (2005 regular session) to describe when the Department of Human Services (DHS) gets access to data held by the departments of Corrections and Public Safety. Included in the changes is the requirement that DHS make a "good faith effort" to obtain a written authorization from a patient of state-operated services before providing certain records. The amendment was effective July 15, 2005.

Sections 47, 48 and 50 add a requirement for a background check for guardians ad litem. Section 51 outlines the process that will be used to conduct the

checks, including the use of an electronic online background study system at DHS. The sections were effective July 15, 2005.



Section 56 amends 2005 Session Laws, Chapter 136, Article 5, section 5 (regular session). Section 626.557 is amended to add a requirement that when a vulnerable adult has committed a violent crime or act of physical aggression, the individual abuse prevention plan must state how risk to others and the individual will be minimized. The change was effective August 1, 2005.

Article 6, section 1 creates the Health Information Technology and Infrastructure Advisory Committee to, among other things, give recommendations on a "statewide interoperable health information infrastructure." Section 53 requires the Commissioner of Health to establish a public health information network. Health is to work with DHS to determine how data from care systems can be utilized to assist with health assessments and targeted prevention efforts. The sections in article 6 were effective July 15, 2005.

Section 55 requires the Commissioner of Health to establish a statewide plan for all hospitals and physician group practices to have an interoperable electronic health record system by January 1, 2015. Reports are due to the Legislature beginning January 15, 2007. The section was effective July 1, 2005.

Article 8, sections 54 and 61 will require individuals who are applying for general assistance or MinnesotaCare to provide a Social Security number (SSN). Refusal to provide a SSN because of a 'well-established religious exemption' (see 42 CFR 435.910) is

***Special Session***

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# Advice from the Swamp Fox\*

\*Francis Marion, "the Swamp Fox," was a colonial officer from South Carolina in the Revolutionary War renowned for hiding in swamps while carrying out guerilla warfare against the British.

## Dear Swamp Fox:

I am the superintendent of schools in the Waving Wheat School District. I was informed recently that I have been chosen to be the responsible authority for the district but I don't know what this means. How did I get to be the responsible authority and what am I responsible for?

*Waving Wheat Superintendent*

## Dear Waving Wheat Superintendent:

The law requires the school district to appoint a responsible authority (RA). The RA is the one individual in the district whose overall duty is to make sure that the district complies with the requirements of Chapter 13. (See, in particular, sections 13.02, subd. 16, and Minnesota Rules, Parts 1205.0900 and 1205.1000.)

Generally, the RA in a city, county, school district or other political subdivision must be an employee who is appointed by the governing body. (See Part

1205.0200, subpart 14, of Minnesota Rules.) You are the responsible authority for the Waving Wheat School District if the Waving Wheat School Board issued a formal resolution appointing you by name to that position.

Many of the duties of the responsible authority are established in section 13.05. Other provisions of Chapter 13 and the Rules establish additional obligations or provide guidance in carrying out responsibilities of the position. These responsibilities include: establishing procedures to ensure appropriate access to data by the public, to secure the rights of individuals who are the subjects of data the district maintains, and to prevent unauthorized access to not public data; preparing all forms and documents required by Chapter 13 and the Rules; and training district staff about their responsibilities under this law. In short, you, the RA, are the person who ultimately is responsible for the district's data practices decisions, and who protects the district from liability for a violation of Chapter 13.

See *From the IPAD Toolbox* in this issue for information about the appointment and functions of the RA and sample resolutions that may be used by cities, counties and school districts to appoint an RA.

*The Swamp Fox*

## Court Case Update

A clerk for the City of Orr was terminated by the City Council in 2004. The clerk filed a lawsuit against the city and one of the allegations was that she was terminated because she refused to comply with an "implied order" to violate the Data Practices Act. As the data practices compliance official for the city, the clerk was responsible for responding to data practices requests. On at least two occasions, the city council questioned the clerk about the speed with which she responded to data requests. One of the occasions was only 10 days before the clerk was placed on leave. The Court of Appeals found that there was a genuine issue of material fact whether the clerk's compliance with the Data Practices Act was the basis for her termination. Because of this conclusion, the case was returned to the trial court for further proceedings. *Erickson v Orr*, Case No. A05-481 (Court of Appeals, Sept. 20, 2005) (unpublished) *review denied* Nov. 22, 2005.

First Judicial District Court Judge Thomas Bibus has issued an order finding that three individuals who had been elected as supervisors in Cannon Falls Township

had intentionally violated the Open Meeting Law on multiple occasions. Judge Bibus removed two of the supervisors from office (the third had already left office). Most of the violations involved not providing notice for special meetings and not complying with the requirement to give notice of special meetings to individuals who request it.

In addition to losing their offices, the three individuals were fined from \$1,600 to \$2,400 each and were ordered to pay the fines from their own pockets. *Brown v. Cannon Falls Township*, (Goodhue County, First Judicial District, CX-05-000181-000184, October 18, 2005). (The township supervisors filed a request for review at the Court of Appeals as of November 30, 2005.)

Closing an open meeting by citing attorney-client privilege was the subject of a decision by the Minnesota Court of Appeals. A peace organization had been

## Court Case Update

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# Opinion Highlights

*The following are highlights of recent advisory opinions by the Commissioner of Administration. All Commissioner's opinions are available on the IPAD web site at [www.ipad.state.mn.us](http://www.ipad.state.mn.us).*

**05-031:** The *Forum of Fargo-Moorhead* asked whether the City of Moorhead complied with Minnesota Statutes, Chapter 13, in refusing to release a transcript of a 911 call. The city argued that the data were active criminal investigative data and therefore protected under section 13.82, subdivision 7. The Commissioner disagreed and opined that a 911 call is a type of request for service data. Therefore, pursuant to section 13.82, subdivision 4, the transcript is public.

**05-033:** The Minnesota Partnership for Action Against Tobacco (MPAAT) asked about the classification of the following data: the underlying raw data collected by contract researchers in the course of conducting studies. The Commissioner discussed that MPAAT is subject to Chapter 13 pursuant to an order issued by the Ramsey County District Court on December 20, 2002. The Commissioner opined that the underlying raw data are public unless otherwise classified by law.

**05-034:** The *Duluth News Tribune* asked the Commissioner whether the Lake Superior Center appropriately refused to provide data on the basis that the Center is not subject to Chapter 13. (The Commissioner, in Advisory Opinion 01-044, determined that the Lake Superior Center was not subject to Chapter 13 but decided to revisit the issue here because of a new contract between the Center and the Lake Superior Authority, an entity subject to Chapter 13.) The Commissioner opined that by virtue of the 2004

Agreement, certain data the center collects, creates, and maintains are subject to Chapter 13 (see section 13.05, subdivision 11) and are public unless otherwise classified.

**05-036:** The *Northeaster* asked whether the City of Minneapolis complied with Chapter 13 in refusing to disclose contact information about city council candidates. The Commissioner noted statutory changes made during the 2005 Legislative Session (see section 13.601). She also noted the general presumption in Chapter 13 that all government data are public unless otherwise classified (see section 13.03, subdivision 1). Because the changes to 13.601 state only that certain data about candidates for election are public and do not classify any remaining data about candidates as private, all contact data about city council candidates are public.

**05-039:** A data subject asked whether the City of Saint Paul complied with Chapter 13 when the city provided no more than a numerical score as the record for a particular portion of the fire captain test. The city asserted it had no additional data. The Commissioner discussed that the city, to meet its obligations under Minnesota Statutes, section 15.17, should maintain data documenting how it arrived at the numerical score. The Commissioner opined that the city's response did not comply with Chapter 13.

**05-040:** A data subject's attorney asked whether the City of Minneapolis complied with Chapter 13 in responding to a request to review the test s/he took as a part of the lieutenant's examination. The city argued, and the Commissioner concurred, that the city could withhold the data pursuant to section 13.34.

## Court Case Update

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denied a permit to participate in Brainerd's Fourth of July parade. A lawsuit over the denial was threatened and the City Council met in closed session with its attorney to discuss the development of a defense strategy. Following the direction set out in *Prior Lake American v. Mader*, 642 N.W.2d 729 (Minn. 2002), the court applied a balancing test. The Court of Appeals noted that the attorney-client privilege exception to the Open Meeting Law should be employed cautiously and is most likely to be used in relation to threatened or pending litigation.

After listing all of the actions taken that would indicate that there was a real threat that the City would

be sued over the denial of the parade permit, the Court concluded that the meeting had been appropriately closed. *Brainerd Daily Dispatch v. Dehen*, 693 N.W.2d 435 (Minn. Ct. App. 2005) *review denied* June 14, 2005.





# From the IPAD Toolbox\*

*\*From the IPAD Toolbox highlights resources for citizens to use in exercising their rights, and for government entities to use in improving compliance with Chapter 13 and other data practices laws.*

One of the original provisions in Chapter 13 is the requirement that every government entity in Minnesota have a responsible authority (RA).

The responsible authority embodies the statute's requirement that there be a single individual in each government entity who is accountable for the entity's data handling practices. The RA's job is to ensure that the entity complies with the requirements of Minnesota Statutes Chapter 13 and Minnesota Rules Chapter 1205.

These specific requirements are summarized, with citations, in the document, *Minnesota Government Data Practices Act: Compliance Checklist*, at: [www.ipad.state.mn.us/docs/checklist.doc](http://www.ipad.state.mn.us/docs/checklist.doc).

The responsible authority can be sued if the entity violates Chapter 13.

Both Chapter 13 and the Rules provide guidance on the appointment of the responsible authority. See, in particular, section 13.02, subd. 16 and Minnesota Rules, Part 1205.0200.

In a state agency, the responsible authority is the commissioner, chief executive officer or duly ap-

pointed official of the agency. Each constitutional officer and elected official is the responsible authority for his/her office.

The responsible authority of a city, county, school district or other political subdivision must be an employee who is appointed by the governing body. Pursuant to section 13.46, the director of each county social services agency is the responsible authority for that agency.

Sample resolutions for appointing an RA in a city, county and school district are provided at [www.ipad.state.mn.us/modeldocs.html](http://www.ipad.state.mn.us/modeldocs.html).

For further information about the appointment and duties of the responsible authority, contact IPAD.

*The Carpenter*



## Director's Message: Priorities, Action Plan Next

*Continued from the front page*

You've suggested that IPAD lead efforts to simplify the law, expand knowledge of compliance challenges and work collaboratively to address those challenges.

Requestors would like IPAD to have more enforcement authority and the power to improve compliance.

MAD provided the following recommendations to aid staff discussion about IPAD's role, mission and priorities:

- Continue to emphasize IPAD's expert knowledge, objectivity and excellent customer service.
- Gain a greater working understanding of the barriers to effective administration of the law.
- Cultivate a shared understanding of the current deficiencies in the Data Practices Act and build a consensus agreement to address them.

Over the coming months, IPAD staff members will be

setting priorities and developing an action plan. The feedback you have provided will be an important part of our discussions.

We will be striving to meet the needs of all of our customers, knowing that our customers have vastly differing goals, expectations, responsibilities and outcomes in mind. Often, IPAD gives advice to both a citizen attempting to exercise their rights and to the government entity that has a duty to protect data. Almost every day, IPAD gives customers advice and answers that they don't like, don't agree with or just wish could be different. On behalf of the IPAD staff, thank you for supporting and understanding the unique role we play. I hope we can all work together to improve the Data Practices Act for all of us.

Lastly, if you are looking for a late New Year's resolution, why not try telling two or three friends about IPAD? Have a great new year!

# 2005 Special Session Laws of Interest

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permitted. The sections are effective the later of August 1, 2007, or the implementation of HealthMatch (a DHS program).

**Chapter 5** is the K-12 education bill. Article 2, section 1 amends section 13.32, subdivision 8 to make the daily attendance records of a student available to the juvenile justice system. Section 23 amends section 120B.30 to add a section directing that the Commissioner of Education make available to parents or guardians a student's actual answer sheets for basic skills tests, Minnesota Comprehensive Assessments, or other statewide tests and assessments.

Section 26 amends the provision on the reporting of the use or possession of a dangerous weapon in school zones. The report must be made to the commissioner of education in an electronic format. Section 27 changes the report date to July 1 of each year and the Commissioner of Education must provide an annual compilation to the Commissioner of Public Safety and the Legislature. Section 31 requires districts to use the electronic reporting system to report exclusions and expulsions within 30 days of the effective date. These sections in Article 2 were retroactively effective July 1, 2005.



**Information Policy  
Analysis Division**

## Questions or comments?

Contact the Information Policy Analysis Division at 201 Administration Building, 50 Sherburne Avenue, St. Paul, MN, 55155; phone 800.657.3721 or 651.296.6733; fax 651.205.4219; email [info.ipad@state.mn.us](mailto:info.ipad@state.mn.us).

Staff: Laurie Beyer-Kropuenske, *Director*, Katie Engler, Janet Hey, Brooke Manley, Linda Miller and Catherine Scott.

This document can be made available in alternative formats, such as large print, Braille or audiotape by calling 651.296.6733.

For TTY communication, contact the Minnesota Relay Service at 800.627.3529 and ask them to place a call to 651.296.6733.

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Section 36 adds a requirement that a head varsity coach be given a 14-day notice that his/her contract will not be renewed. The school board must give the coach written reasons for the non-renewal and provide the coach with an opportunity to respond at a school board meeting. The meeting may be open or closed with the coach exercising the choice unless the meeting is closed pursuant to 13D.05, subd. 2. This section was effective August 1, 2005.

Section 77 authorizes the Board of the Perpich Center for Arts Education to hold meetings by telephone or other electronic means if certain conditions are met. The section was effective July 15, 2005.

Section 79 prohibits the Commissioner of Public Safety from linking or conditioning the issuance of a driver's license to attendance in secondary school. Section 80 amends section 260C.201, subdivision 1 to authorize the courts to suspend or revoke a juvenile's driver's license in either the best interests of the child "or" (formerly "and") public safety. These sections were retroactively effective July 1, 2005.

**Chapter 6** is the omnibus transportation funding bill. Article 2, section 25 contains language that authorizes the Commissioner of Public Safety to impose a surcharge of 50 cents on each fee charged under section 13.03, subdivision 3 for copies or electronic transmittal of information about the registration of a vehicle, a driver's license, instruction permit or Minnesota ID card. The surcharge does not apply to requests made by the subject of the data.

Article 3, section 1 amends subdivision 3 of section 13.44 to classify appraisals made by appraisers working for the landowner as private or nonpublic. The list of occurrences that make appraisal data public has also been reduced. The exchange of appraisals or the submission of data to the owner under section 117.036 no longer triggers a change in classification.

All of the changes in Chapter 6 were effective July 15, 2005.

**Chapter 7** is the Revisor's bill. Section 31 is a correction to language about Hennepin County Medical Center (HCMC) and authorizes Hennepin Healthcare System, Inc. (the successor to HCMC) to meet in closed session to discuss products or services that are also available in the competitive market. The amended section is 383B.217, subdivision 7. The corrections are effective the same date as the provision that has been corrected.